Filed 11/24/15 In re R.S. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re R.S., a Person Coming Under the Juvenile Court Law.	C074377
THE PEOPLE, Plaintiff and Respondent, v. R.S., Defendant and Appellant.	(Super. Ct. No. JV130186)

Sacramento police officers observed the minor enter an apartment complex at a time of day when they suspected he should have been in school. When the officers called the minor over and questioned him, the minor gave them a false name. The officers asked for the minor's real name and learned that the minor had a warrant for his arrest.

The People filed a juvenile wardship petition alleging that the minor provided a false identification to a police officer. The minor moved to suppress evidence of the statements he made to the police officers on the ground that he was unlawfully detained. The juvenile court denied the motion to suppress and sustained the wardship petition.

The minor now contends (1) the statements he made to the officers must be excluded as a product of an unlawful detention because the officers lacked a reasonable suspicion that he was a truant when they detained him; and (2) the juvenile court's order sustaining the wardship petition must be reversed because the minor was not lawfully detained when he provided the officers with false identification.

We conclude that even if the initial contact between the minor and police officers was a detention within the meaning of the Fourth Amendment, there was a particularized and objective basis for the officers to reasonably suspect the minor was a truant and, thus, temporarily detain him in order to conduct an investigation. We will affirm the juvenile court orders.

BACKGROUND

The People filed a one-count juvenile wardship petition alleging that the minor violated Penal Code section 148.9, subdivision (a), in that he provided a false identity to a police officer upon a lawful detention, in order to evade the process of the juvenile court and proper identification by an investigating officer. The minor, who was then 16 years of age, was already a ward of the juvenile court when the petition was filed.

The minor moved to suppress evidence obtained as a result of his detention. He argued officers detained him unlawfully because no specific articulable fact caused them to suspect he was involved in criminal activity. The People opposed the minor's motion. The juvenile court conducted an evidentiary hearing at which Sacramento Police Officers Jeffrey Babbage and Ronald Chesterman were the only witnesses.

The evidence before the trial court showed:

Officer Babbage and Officer Chesterman were on a service call at the Countrywood apartment complex in Sacramento at about 9:00 a.m. when they saw the minor enter the fenced apartment complex. The minor was not accompanied by an adult. It was a school day and the minor did not have any books or a backpack. He appeared to hesitate when he saw the officers, who were located inside the apartment complex.

It appeared to Officer Babbage the minor was going to change direction; then, the minor continued to walk toward the officers.

Officer Babbage thought the minor might be a truant because he looked like he was under the age of 18 years, and there were a lot of problems with truancy and burglaries because of truants in that area. The officers conferred and agreed the minor looked "awful young" and "should be in school." Officer Chesterman thought the minor looked like he was 15, 16, 17 years old.

Officer Babbage asked the minor to "come over here." The minor complied. Officer Babbage asked the minor what school he attended. The minor answered he went to Rio Cazadero High School. Officer Babbage knew Rio Cazadero High School had a morning session that started at 8:00 a.m. and ended at 11:30 a.m., and an afternoon schedule that started at noon and ended at 3:00 p.m.

Officer Babbage asked the minor for his name and date of birth, and asked what the minor was doing out during school hours. The minor said his name was Willie Hinson, but spelled his last name as "Hinton." Officer Babbage had the minor stand at the front of his patrol car while he called Rio Cazadero High School. Officer Chesterman remained with the minor. The minor was not handcuffed. Officer Babbage quickly learned there was no student named Willie Hinton in the Elk Grove School District.

Officer Babbage placed the minor in his patrol car. The officers told the minor he was lying about his name. The minor then said his name was Kyris Scoggins. That was not the minor's true name either, but Officer Chesterman ran a check on that name, saw defendant's name during the check, and recognized his true name. The minor admitted his true name. The officers discovered there was a warrant for the minor's arrest.[1]

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[1] The minor had absconded from the group home where he had been placed as a ward of the juvenile court and a warrant was issued for his arrest.

They arrested the minor for providing a false identification to a peace officer and upon the arrest warrant.

The People argued that even if the officers detained the minor by asking him to come over to them, they had a reasonable suspicion the minor was a truant based on their observation that the minor appeared to be a juvenile walking around on a school day, without a backpack or books, and the officers acted lawfully in detaining the minor to conduct an investigation. The minor's counsel countered that the officers detained the minor when they asked him to "come over here" because "[a]nyone in their right mind is going to understand they don't get to walk away." The minor's counsel claimed the detention was unlawful because the officers had no information the minor was involved in criminal activity.

The juvenile court denied the minor's motion and found that all elements of the Penal Code section 148.9 allegation had been met. The juvenile court concluded that even if the contact between the minor and the officers was a detention, the officers were justified in stopping the minor to conduct a truancy investigation. The juvenile court sustained the petition.

STANDARD OF REVIEW

"In ruling on a motion to suppress, the trial court finds the historical facts, then determines whether the applicable rule of law has been violated. [Citation.]" (*In re Raymond C.* (2008) 45 Cal.4th 303, 306.) We review the trial court's factual findings for substantial evidence. (*Ibid.*) We view the evidence in a light favorable to the trial court's ruling and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*People v. Tully* (2012) 54 Cal.4th 952, 979; *In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.) We independently review the trial court's application of the law to the facts so found. (*In re Raymond C.*, supra, 45 Cal.4th at p. 306; *United States v. Arvizu* (2002) 534 U.S. 266, 275 [151 L.Ed.2d 740, 750-751].)

DISCUSSION

I

The minor contends the statements he made to Officer Babbage and Officer Chesterman must be excluded as a product of an unlawful detention because the officers lacked a reasonable suspicion that he was a truant when they detained him.

We look exclusively to federal constitutional standards to decide the minor's claim. (*People v. Glaser* (1995) 11 Cal.4th 354, 363; *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733.) The Fourth Amendment to the United States Constitution recognizes the right of the people against unreasonable seizures of their persons. (U.S. Const., 4th Amend.) But not all encounters with police officers rise to the level of a seizure within the meaning of the Fourth Amendment. Some police contacts are consensual encounters which result in no restraint of a person's liberty and may properly be initiated by police officers even if they lack objective justification for the contact. (*In re James D.* (1987) 43 Cal.3d 903, 911-912.) Consensual encounters do not trigger Fourth Amendment concerns. (*Id.* at p. 918.) Some police contacts are detentions which constitute seizures under the Fourth Amendment and may be undertaken by the police only if there is an objectively reasonable suspicion that the person to be contacted has committed or is about to commit a crime. (*Ibid.*; *United States v. Arvizu, supra,* 534 U.S. at p. 273 [151 L.Ed.2d at p. 749].) Reasonable suspicion is a less demanding standard than probable cause and preponderance of the evidence. (*United States v. Arvizu, supra*, 534 U.S. at p. 274 [151 L.Ed.2d at p. 750]; *Illinois v. Wardlow* (2000) 528 U.S. 119, 123 [145 L.Ed.2d 570, 576]; *People v. Walker* (2012) 210 Cal.App.4th 1372, 1382.) Other police contacts, such as formal arrests and restraints comparable to an arrest, exceed the permissible limits of a detention and are constitutionally permissible only if the police have probable cause to arrest the individual for a crime. (*In re James D., supra,* 43 Cal.3d at pp. 911-912.)

A police officer may detain a person to investigate whether he is a truant when, looking at the totality of the circumstances known or apparent to the officer, there are specific and articulable facts that would cause a reasonable officer in like position to reasonably suspect that a truancy violation is occurring and that the person he intends to detain is a truant.[2] (*In re James D., supra*, 43 Cal.3d at pp. 915-916; *United States v. Arvizu, supra,* 534 U.S. at p. 273 [151 L.Ed.2d at p. 749].) The reasonable suspicion necessary to justify an investigatory stop is measured solely by an objective standard, i.e., whether the officer's conduct was objectively reasonable. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145.) We do not consider the officer's actual state of mind, subjective suspicion, or motive. (*Id.* at pp. 145, 147; *People v. Conway* (1994) 25 Cal.App.4th 385, 388; *People v. Lloyd, supra*, 4 Cal.App.4th at p. 733.) An officer may draw on his experience and training to make inferences from and deductions about the cumulative information available to him. (*People v. Letner and Tobin, supra*, 50 Cal.4th at pp. 145-146; *United States v. Arvizu, supra*, 534 U.S. at pp. 273, 276 [151 L.Ed.2d at pp. 749, 751] [reviewing court should give due weight to the specialized training, experience, observations, and factual inferences drawn by the officer].) But an investigative stop may not be predicated on mere curiosity, rumor, or hunch, even if the officer is acting in good faith. (*In re James D., supra*, 43 Cal.3d at pp. 915-916.)

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[2] "By statute, all children aged six to sixteen must attend school full time [citation] unless exempted from that requirement for various reasons [citations]. Similarly, those between 16 and 18 must attend continuing education classes for 4 hours each week [citation] -- or, if not regularly employed, for 15 hours each week [citation] -- unless specifically exempted from doing so. [Citation] [Education Code] Section 48264 provides: '[A] peace officer . . . may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his home and who is absent from school without valid excuse . . .' " (*In re James D., supra*, 43 Cal.3d at pp. 909-910, emphasis omitted.)

Reasonable suspicion of criminal activity justifies a brief detention for the purpose of questioning limited to the purpose of the stop. (*People v. Celis* (2004) 33 Cal.4th 667, 674 [detention must last no longer than is necessary to effectuate the purpose of the stop]; *In re James D., supra*, 43 Cal.3d at pp. 915-916; *Florida v. Royer* (1983) 460 U.S. 491, 500 [75 L.Ed.2d 229, 238].)

The California Supreme Court addressed truancy stops in the context of the Fourth Amendment in *In re James D., supra*, 43 Cal.3d 903. In that case, patrol officers saw a person who appeared to be 15 or 16 years old walking on a sidewalk, carrying a book bag, at about 10:30 a.m. on a weekday. (*Id.* at p. 908.) The officers approached the minor and asked whether they could speak with him. (*Ibid.*) The minor said "sure" and walked over to the officers. (*Ibid.*) One of the officers asked for the minor's identification and was told the minor had none. (*Ibid.*) The officer then asked where the minor came from, where he was going to, and his address. (*Ibid.*) The minor said he had come from a friend's house, but could not remember the friend's name or house. (*Ibid.*) The minor appeared nervous and hesitant. (*Ibid.*) He suddenly put his hand under his jacket, causing the officer to conduct a patdown search and discover what turned out to be LSD. (*Ibid.*) The minor moved to suppress evidence of the LSD as the product of an unlawful detention. (*Ibid.*)

The California Supreme Court said the test for determining whether a detention is justified under the Fourth Amendment involves a weighing of (i) the public interest served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty, and (ii) the officer's reasonable suspicion that a crime has occurred or is occurring. (*In re James D., supra*, 43 Cal.3d at p. 914.) With regard to the initial consideration, the Supreme Court concluded (1) the governmental interest in enforcing truancy laws in order to achieve the State's educational goal is substantial; (2) investigation and "arrest" pursuant to Education Code section 48264 substantially advance the State's educational goal; and (3) the degree of

interference with personal liberty occasioned by questioning strictly limited to investigate whether a person is a truant is slight when balanced against the legitimate governmental interest involved. (*Id.* at p. 915.)

With regard to the second consideration, the Supreme Court said a person's youthful appearance, although a highly relevant factor in determining the propriety of a truancy detention, does not, by itself, justify an investigatory stop. (*In re James D.*, *supra*, 43 Cal.3d at p. 917.) However, the Court concluded, even if a detention had occurred (something which the Supreme Court said was far from clear), the trial court erred in concluding the officers detained the minor based solely on his youthful appearance because other factors in that case would justify a truancy detention, namely, school was in session, the minor carried a book bag, and he was walking at least three miles from the nearest school. (*Id.* at p. 917.)

In re Humberto O. (2000) 80 Cal.App.4th 237 addressed the validity of a truancy arrest. In that case, three officers saw the defendant walking several miles from Hollywood High School at 9:15 a.m. on a weekday. (*Id.* at p. 240.) The officers suspected the defendant was a truant because of his youthful appearance, backpack, and proximity to a school during school hours. (*Ibid.*) The officers stopped the defendant, who told the officers he attended Hollywood High School. (*Ibid.*) The officers knew the high school was in session at the time. (*Ibid.*) The defendant provided the officers a bus pass bearing another person's name and photograph when the officers requested his school identification. (*Ibid.*) The officers told the defendant they would cite him for truancy. (*Ibid.*) They found a dagger in the defendant's backpack in the course of transporting him to the high school. (*Ibid.*) The defendant sought to suppress evidence of the dagger, arguing the officers had no probable cause to arrest him. (*Ibid.*)

The appellate court concluded there was probable cause to arrest the defendant for truancy because the defendant was found several miles from school during school hours; he was youthful-looking and was carrying a backpack; he confirmed he was in high

school; he failed to provide an excuse for being out of school; and he provided the officers an identification that belonged to someone else. (*In re Humberto O.*, *supra*, 80 Cal.App.4th at p. 242; see *In re Miguel G.* (1980) 111 Cal.App.3d 345, 347, 349-350 [there was probable cause to arrest a minor for truancy where officers saw the minor walking about ten blocks from school at a time when school was in session; others identified the minor as a high school student; and the minor told officers he was late for school, but he did not have an excuse for being late].)

Applying the above principles to this case, we conclude that taken together, the circumstances present when Officer Babbage and Officer Chesterman encountered the minor, considered in light of the officers' knowledge and experience, were enough to form a particularized and objective basis for them to temporarily detain the minor and investigate whether he was a truant. Contrary to the minor's claim, his youthful appearance was not the only consideration supporting a reasonable suspicion that he was a truant.

The trial court found the officers had substantial experience conducting truancy investigations. Officer Babbage, a 17-year veteran with the Sacramento Police Department, testified that he dealt with truancy on a daily basis. He said truancy was a problem in the area where the officers saw the minor. (*People v. Souza* (1994) 9 Cal.4th 224, 240-241 [" 'we must allow those we hire to maintain our peace as well as to apprehend criminals after the fact, to give appropriate consideration to their surroundings and to draw rational inferences therefrom, unless we are prepared to insist that they cease to exercise their senses and their reasoning abilities the moment they venture forth on patrol.' "] Officer Babbage and Officer Chesterman, a 19-year Sacramento police officer who also dealt with truancy daily, thought the minor appeared young and subject to the compulsory education laws. The juvenile court judge, who was in a position to observe the minor, agreed with the officers' assessment. (*In re James D.*, *supra*, 43 Cal.3d at p. 916 ["The judge at a suppression hearing should be able to determine, from looking at

the defendant and taking into account any changes in his appearance since the event, whether the officer's estimation of age was reasonable."].)

In addition, the officers' testimonies show the minor was out of school during school hours. Officer Babbage testified the minor was walking into the complex; he was not carrying a backpack or books, suggesting he was not going to school; and he appeared to hesitate when he saw the officers. It was not necessary the officers know the minor is actually a truant to contact him and ask questions. (*In re James D., supra*, 43 Cal.3d at p. 917.)

The minor points out Officer Babbage said it was possible the minor was not a truant. Whether the officer actually believed the minor was not a truant is not relevant to our inquiry. (*People v. Letner and Tobin, supra*, 50 Cal.4th at pp. 145, 147; *People v. Conway, supra,* 25 Cal.App.4th at p. 388; *People v. Lloyd, supra,* 4 Cal.App.4th at p. 733.) The possibility of an innocent explanation for the minor's presence at the apartment complex does not preclude the existence of a reasonable suspicion justifying an investigatory stop. (*In re Tony C.* (1978) 21 Cal.3d 888, 894, superseded by statute on another point as stated in *People v. Lloyd, supra,* 4 Cal.App.4th at p. 733 ["The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal -- to 'enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges."]; *United States v. Arvizu, supra,* 534 U.S. at pp. 274, 277 [151 L.Ed.2d at pp. 750, 752].)

The officers' conduct did not exceed the permissible scope of an investigatory detention. The stop was short. (*People v. Celis, supra*, 33 Cal.4th at p. 675 [the brevity of a police contact is an important factor in determining whether a seizure is so minimally intrusive as to be justifiable on reasonable suspicion].) It took the officers 15 to 20 minutes to determine the minor's true identity. The officers asked the minor questions

that elicited information about his name, date of birth, and where he went to school. The officers' questions would have quickly confirmed or dispelled their suspicion the minor was a truant. (*In re James D., supra*, 43 Cal.3d at p. 918, fn. 8 [police officers' conduct did not exceed the permissible scope of a truancy stop where the officers' questions were designed to quickly determine whether the minor was a truant].) Officer Babbage called Rio Cazadero High School to determine whether the minor was a student at that school. Thus, even if the contact with the minor before he was placed in the patrol car rose to the level of a detention, it was reasonable under the Fourth Amendment.

Because we conclude the officers had reasonable suspicion to detain the minor in order to conduct a truancy investigation, we need not consider the Attorney General's argument that the minor is estopped from challenging his detention. In any event, we note that the prosecution did not assert estoppel in the juvenile court.

II

The minor next contends the juvenile court's order sustaining the juvenile wardship petition must be reversed because the minor was not lawfully detained when he provided the officers with false identification.

Penal Code section 148.9 provides that a person who falsely represents or identifies himself as another person or as a fictitious person to a peace officer, upon a lawful detention or arrest of the person, either to evade the process of the court or to evade the proper identification of the person by the investigating officer, is guilty of a misdemeanor. (Pen. Code, § 148.9, subd. (a).) Penal Code section 148.9 applies only when a false identification is given in connection with a lawful detention or arrest. (*People v. Walker, supra,* 210 Cal.App.4th at p. 1392; *In re Voeurn O.* (1995) 35 Cal.App.4th 793, 795, 797.)

The minor and the Attorney General disagree about when a detention occurred. The minor contends he was detained when Officer Babbage directed him to "come over

here." The Attorney General contends the minor was not detained until he was placed in the back of a patrol car.

The minor provided the officers with two false names. He falsely said his name was Willie Hinson, spelled "Hinton," before he was placed in the patrol car. Later, he falsely said his name was Kyris Scoggins after he was placed in the patrol car. As we have already explained, even if the initial contact between the minor and the police officers was a detention, there was a particularized and objective basis for the officers to reasonably suspect the minor was a truant and, thus, temporarily detain him in order to conduct an investigation. The detention was not unlawful and defendant's claim lacks merit.

The minor and the Attorney General agree, and the trial court found, that placing the minor in the back of a patrol car was a detention. That is where the minor gave the second false name. It is reasonable to infer that the minor gave a false name to evade the process of the court or proper identification by the officers because the minor had absconded from his group home and there was a warrant for his arrest. We reject the minor's claim that the order sustaining the juvenile wardship petition must be reversed.

DISPOSITION

The orders and judgment of the juvenile court are affirmed.

/S/
Mauro, J.

We concur:

/S/
Raye, P. J.

/S/
Murray, J.